

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**DEFENDANTS' SUPPLEMENTAL MOTION MODIFYING
REQUESTED RELIEF SOUGHT IN THE *LONE PINE* ORDER**

Defendants previously moved for entry of a Lone Pine Order requiring that each Plaintiff be required to produce an Affidavit of a medical expert stating that each individual Plaintiff had evidence of digoxin toxicity, specifically demonstrating and referring to the medical chart to support such contention. On September 11, 2009, Stanley Jackson, counsel for Doris Pinder, filed a "Response to Defendant's Motion for Entry of a Lone Pine Case Management Order." Counsel did not oppose Defendants' Motion generally, and appended a detailed typed discharge summary electrically signed by a physician noting digoxin toxicity. This is exactly the type of evidence that Defendants believe is required at this threshold point in all cases in this MDL.

Defendants agree that Mrs. Pinder need do no more at this stage of the proceedings. Defendants also agree that the Lone Pine Order sought by them could be satisfied by specific medical records from a treating physician clearly diagnosing digoxin toxicity. As a result, Defendants modify their requested relief as follows:

Therefore, Defendants specifically request that Plaintiffs be required to produce an Affidavit from a medical expert identifying case-specific evidence of digoxin toxicity. The Affidavit should identify the specific portions of the medical records that, to a reasonable degree of medical certainty, constitute case-specific (*e.g.*, medical records that show elevated

digoxin levels or references in the record showing a clinical concern about it). Plaintiffs may also satisfy this order by producing medical records demonstrating that a treating physician diagnosed digoxin toxicity.

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2009, a copy of the foregoing Supplemental Motion Modifying Requested Relief Sought in the Lone Pine Order was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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